

REMARKS

Status of Claims

Claims 1-5 and 15-21 and 24-48 are pending herein. Claim 38 is allowed

Claims 39-48 have been added herein. Claims 6-7 have been previously cancelled.

Claims 8-14, 22 and 23 are cancelled herein, because they are believed to be out of compliance with 35 USC 112, fourth paragraph (“a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed”).

Claims 1, 19, 20, 26-31 and 34-37 are amended herein. Support for the amendment wherein the biocompatible polymer is different from the bioactive polymer can be found throughout the specification and claims. See, e.g., claims 2 and 3. The remaining amendments are self-explanatory and have been made to correct various inadvertencies in the claims or to include the limitations of the base claim.

Support for new claims 39-48 can be found, for example, original claim 19 and in paragraphs [0038] and [0040] of the specification.

No new matter is added.

Withdrawal of Rejections

The Examiner’s withdrawal of the preceding rejections under 35 USC 102(b) are noted with appreciation.

Claim Rejection under 25 USC 112, second paragraph

Claim 19 is rejected because the Office urges that it is unclear how a “hydrogel” describes a synthetic polymer. This rejection is respectfully traversed.

As is well known in the medical arts, hydrogel polymers are water absorbing polymers and thus are generally hydrophilic. As indicated in the present specification at paragraph [0042], hydrogel polymers can be naturally occurring polymers or synthetic polymers. In claim withdrawn claim 20, several examples of synthetic hydrogel polymers are given.

Withdrawal of the rejection of claim 19 under 35 USC 112, second paragraph is respectfully requested.

Rejection Under 35 U.S.C. §102(b)--Mori

Claims 1, 4, 5, 25, 27-32 and 34-37 stand rejected under 35 U.S.C. 102(b) as being anticipated by Mori et al., JP 06128289 (Mori).

For a reference to anticipate a claim it must disclose each and every element of the claim. See MPEP 2131 and cases cited therein, especially *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) and *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

The Examiner has based this rejection upon an interpretation of “biocompatible polymer” in the claims such that the bioactive polymer can be the same as the biocompatible polymer. This interpretation is based upon the fact that claim 3 is drawn to an embodiment in which “the biocompatible polymer is a different bioactive polymer.”

Applicant has amended the claims to now explicitly state that the biocompatible polymer is different from the bioactive polymer. Accordingly, it is believed that this rejection is now moot.

Applicant respectfully requests withdrawal of the rejection of the claims in view of Mori.

Rejection Under 35 U.S.C. §102(b)--Zamora

Claims 1, 4, 5, 25, 27-32 and 34-37 stand rejected under 35 U.S.C. 102(e) as being anticipated by Zamora, US 7,297,343 (Zamora). This rejection is respectfully traversed.

Zamora is directed to a wound dressing utilizing a polymeric film having complexed thereto by hydrophobic interaction a construct including a polyanion covalently bonded to a hydrophobic prosthetic moiety, with one or more bioactive molecules directly complexed to the polyanion. See Abstract. The polyanion may be heparin or a heparin-activity molecule. *Id.* The prosthetic group may include a hydrophobic silyl-containing moiety. *Id.* Bioactive molecules include adhesive molecules, growth factor molecules, and therapeutic molecules, including antibiotics. *Id.*

As indicated above the wound dressing of Zamora includes a construct including a polyanion (which may be a polysaccharide or proteoglycan, i.e., heparin) *covalently bonded to* a hydrophobic prosthetic moiety (which can include a linear repeat dimethylsilane group), with one or more bioactive molecules (which include adhesive molecules, growth factor molecules, and therapeutic molecules) directly *complexed to* the polyanion.

The present invention comprises: (a) the biocompatible polymer and (b) the bioactive polymer. The bioactive polymer further includes (i) at least one peptide and/or protein subunit and (ii) at least one polysaccharide and/or proteoglycan subunit.

In Zamora, the polysaccharide and/or proteoglycan moiety (i.e., a polyanion such as heparin) is covalently bonded to the hydrophobic prosthetic moiety, while the peptide and/or protein moiety (i.e., a bioactive adhesive molecule such as collagen, laminin, fibronectin, fibrinogen, elastin, or amino acid polymers that bind to heparin), on the other hand, is merely *complexed* to the polysaccharide and/or proteoglycan moiety (affinity complexation is described in claim 5). Thus, the polysaccharide and/or proteoglycan moiety and the polysaccharide and/or proteoglycan moiety are not found within a single polymer as claimed.

For at least the above reasons, Applicant respectfully requests withdrawal of the rejection of the claims in view of Zamora.

Objection to Claim 26

Claim 26 is objected to as being a substantial duplicate of allowed claim 38. Citing MPEP 706.03(k), the Examiner indicates that when two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim.

The Examiner then notes that the claims encompass overlapping subject matter when the peptide is a dRGD, YIGSR, or an IVKAV peptide. The fact that two claims encompass overlapping subject matter, however, does not rise to the level of the claims being “duplicates or else are so close in content that they both cover the same thing.” In the present situations, the cell adhesion peptide in claim 38 can be a RGD peptide, which is not claimed in claim 26.

Claim 26 is also objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. This has been done above.

Accordingly, it is believed that claim 26 is in condition for allowance.

Conclusion

Should the Examiner be of the view that an interview would expedite consideration of the application, request is made that the Examiner telephone the Applicants' attorney at (703) 433-0510 in order that any outstanding issues be resolved.

The Office is authorized to charge the \$220.00 fee for one additional independent claim (amended claim 26) and the \$130 fee for a one month extension of time to deposit account number 50-1047. In addition, the Office is authorized to charge any additional fees required, or credit any excess, to deposit account number 50-1047.

Dated: 2/2/2009

Respectfully submitted,

Attorney for Applicant
Mayer & Williams, PC
251 North Avenue West, 2nd Floor
Westfield, NJ 07090
Tel.: 703-433-0510
Fax: 703-433-2362

/David B. Bonham/
David B. Bonham
Registration No. 34,297